84-1161

CASE NO. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

LATRELLE CAMPBELL,
PETITIONER,

v.

PIERCE COUNTY, GEORGIA, ET AL.,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether an at-will employee of local government, deprived of liberty when fired from that employment on publicized false charges of dishonesty and misconduct, was entitled to a pre-termination hearing?

2. Whether a prompt post-termination hearing before a biased tribunal which was not sufficiently impartial to disavow the false charges but publicly affirmed them was constitutionally adequate where undisputed evidence showed that the stigmatized employee was not guilty of the charge of misappropriation of public funds and where the accusations at the hearing were expanded beyond the scope of the notice given the employee?

3. Whether an at-will employee of local government, deprived of liberty by the denial of a pre-termination hearing

when fired from that employment on false charges of dishonesty and misconduct and by affirmation of the false charges by a biased tribunal in a sham post-termination hearing, was entitled to a federal damages remedy pursuant to 42 U.S.C. § 1983?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States Court of Appeals for the Eleventh Circuit, whose judgment is sought to be reviewed, are (1) Latrelle Campbell, Petitioner, and Respondents (2) Pierce County, Georgia, (3) Troy Mattox and (4) Foy Kimbrell, former commissioners of Pierce County, and (5) Larry Thomas, former Clerk of the Board of Commissioners of Pierce County.

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

LATRELLE CAMPBELL,

Petitioner,

v.

PIERCE COUNTY, GEORGIA, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

TO: THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Latrelle Campbell, prays that a Writ of Certiorari issue to review the Judgment of the Court of Appeals for the Eleventh Circuit entered in the above-entitled cause on September 18, 1984, and the Order denying the Petition

for Rehearing entered on October 24, 1984.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is published at 741 F.2d 1342 (11th Cir. 1984). A copy is included in the Appendix at pages A-2 through A-19. The opinion of the United States District Court for the Southern District of Georgia is unpublished, but a copy is included in the Appendix at pages A-20 through A-37.

JURISDICTION

The Judgment of the Court of Appeals was entered on September 18, 1984. The Order of that court denying the Petition for Rehearing was entered on October 24, 1984. 28 U.S.C. § 1254(1) confers jurisdiction on the Supreme Court of the

United States to review the judgment in question by writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

U.S. Const. Amend. XIV, § 1 provides in pertinent part:

> No State...shall deprive any person of life, liberty, or property, without due process of law....

42 U.S.C. § 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an

> action at law, suit in equity or other proper proceeding for redress....

STATEMENT OF THE CASE

Petitioner filed her complaint in the United States District Court for the Southern District of Georgia, basing jurisdiction of that Court on 28 U.S.C. § 1343(3) and alleging the denial of her constitutionally protected right to due process of law in violation of 42 U.S.C. § 1983. The complaint named as defendants Pierce County, two former county commissioners and the clerk of the board of commissioners. Petitioner alleged that the three animate defendants fired her without a hearing on the pretext, inter alia, that she was guilty of misappropriation of county funds, that the false charges were disseminated to news media and the public, that a post-termination hearing was held pursuant to inadequate

notice and was a sham, that the tribunal conducting the post-termination hearing was prejudiced, that the stigmatizing charges damaged her reputation and impaired her employment opportunities, and that this injury was aggravated by affirmation of the false charges at the sham hearing. Respondents filed appropriate responsive pleadings and thereafter filed a motion for summary judgment. On September 30, 1983, the district court granted respondents' motion for summary judgment, and petitioner appealed to the United States Court of Appeals for the Eleventh Circuit. The court of appeals affirmed the judgment of the district court on September 18, 1984, and denied the Petition for Rehearing on October 24, 1984.

The evidence on motion for summary judgment showed that petitioner was employed in the office of the Board of Commissioners of Pierce County until January

5, 1982. On that date a majority of the commissioners voted to dismiss her from employment. The reasons cited were insubordination, disrespect and "misappropriation of some monies on the county employees Hospital premium payments." The personnel action taken against petitioner and the reasons for her dismissal were reported in the minutes of the commissioners' meeting and thus became available to the public. Subsequently, local newspapers and radio stations began a series of reports publicizing her termination and the charges of insubordination and misappropriation of county funds.

On January 8, petitioner received correspondence from respondents specifying reasons for her dismissal, including the charge of "Misappropriation of County funds-insurance premium payments," and on the same date the county attorney sent

petitioner's attorney a letter setting a date for the hearing that petitioner had previously requested.

On January 21, 1982, a hearing was held before the board of commissioners at which the county presented witnesses against petitioner. Petitioner was given the opportunity to cross-examine such witnesses and to present evidence on her own behalf.

Evidence at the post-termination hearing and on motion for summary judgment showed without dispute that the alleged and highly publicized "misappropriation" of funds was the continued payment of group medical premiums for a county employee on leave of absence because of illness, that the payments were specifically authorized by the chairman of the board of commmissioners, who under Georgia law was the county's chief executive officer, and that other members of

the board had been aware of the payments for a number of months during which they made no objection. The evidence further showed that the county had similarly continued premium payments for other employees on leave because of illness and would have authorized a finding that the county had a policy of continuing such payments. In fact, the checks covering the payments were sometimes written by persons other than petitioner.

Conducting the post-termination hearing in an aggressively prosecutorial manner, the county introduced surprise evidence of an entirely different (and false) charge of misappropriation of county funds through the allegedly unauthorized payment of an hourly "tool expense" to another employee and expanded the charges of insubordination and disrespect to the clerk to include petitioner's relationship with previous clerks,

which had been condoned over a nine-year span.

The testimony of county witnesses established that petitioner was an efficient and able employee. Yet, it would be fair to say that there was conflicting evidence of intermittent rude or uncooperative behavior which might have furnished a rational basis for dismissing petitioner because of her personality, but certainly not because of thievery as charged.

At the conclusion of the post-termination hearing, notwithstanding undisputed evidence that petitioner had made the insurance premium payments pursuant to specific instructions and apparent county policy, the board of commissioners affirmed its previous decision without repudiating any of the false charges against petitioner, thereby leaving peti-

tioner branded with the stigma of thievery.

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT REQUIRING A PRE-TERMINATION HEARING AND WITH DECISIONS OF OTHER FEDERAL COURTS OF APPEALS.

The court of appeals held in its decision of September 18, 1984, that a county employee, deprived of liberty by the publication of false charges of dishonesty and misconduct in connection with discharge from that employment, is not entitled to a pre-termination hearing. The court of appeals quoted In Re Selcraig, 705 F.2d 789, 796 (5th Cir. 1983):

> The hearing...is not a prerequisite to publication [of adverse material] and the state is not obliged to tender one. The state need only make known to the stigmatized employee that he may have an opportunity to clear his name upon request.

The court of appeals also held, in footnote 2 of its opinion, that the three-factor balancing test of Mathews v. Eldridge, 424 U.S. 319 (1976), applied to deprivations of property but not to deprivations of liberty. Thus, the court of appeals held that a pre-termination hearing is never required where "only liberty interests" are involved.

The decisions of the eleventh circuit in this case and of the fifth circuit in Selcraig, supra, that the right to a hearing is not triggered until the stigmatized employee requests a hearing after the publication of false charges, are in conflict with language of the Supreme Court in Board of Regents v. Roth, 408 U.S. 564 (1972). In Roth, the Supreme Court wrote, at 408 U.S. 569-570, as follows:

> When protected interests are implicated, the right to some kind of prior

> hearing is paramount. [Emphasis added.]

Discussing Roth's rights in the event he had been stigmatized, the Supreme Court went on to say, at 408 U.S. 574:

> The Court has held, for example, that a State...cannot foreclose a range of opportunities...in a manner that denies the right to a full prior hearing. [Emphasis added.]

The language of the Supreme Court in Roth, supra, is supported by the opinion of Mr. Justice Brennan in Codd v. Velger, 429 U.S. 624 (1977), in which he wrote at page 629:

> Under Board of Regents v. Roth... respondent therefore was entitled to a timely pretermination hearing. The Court today reaffirms Roth....

The language of the Supreme Court in Roth, supra, is also supported by the opinion of the Supreme Court in Owen v. City of Independence, 445 U.S. 622, 632 (1980), wherein the Court, dealing with a liberty interest, described the action of

the court of appeals in footnote 12, without disapproval, as follows:

> The court explained that petitioner's termination without a hearing must be considered a nullity, and that ordinarily he ought to remain on the payroll and receive wages until a hearing is held and a proper determination on his retention is made.

The applicable principle was eloquently stated in Wisconsin v. Constantineau, 400 U.S. 433 (1971), wherein the Court wrote at page 437:

> [W]here the State attaches "a badge of infamy" to the citizen, due process comes into play. [Citation omitted.] "[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." [Emphasis added, citation omitted.]

The decisions of the eleventh circuit in this case and of the fifth circuit in Selcraig, supra, are also in conflict with those of other federal courts of appeals. In Vanelli v. Reynolds School Dist. No. 7, 667 F.2d 773 (9th Cir.

1982), the Court of Appeals for the Ninth Circuit applied the balancing test (footnote 8) of Mathews v. Eldridge, 424 U.S. 319, supra, and held that a pre-termination hearing was required, stating at page 778 as follows:

> There is a strong presumption that a public employee is entitled to some form of notice and opportunity to be heard before being deprived of a property or liberty interest. [Emphasis added, citations omitted.]

In Rodriguez de Quinonez v. Perez, 596 F.2d 486, 490 (1st Cir. 1979), the Court of Appeals for the First Circuit applied the balancing test in determining that a pre-termination hearing was not required. In Owen v. City of Independence, 560 F.2d 925 (8th Cir. 1977), rev'd other grounds 445 U.S. 622, the Court of Appeals for the Eighth Circuit held that the employee's termination without a hearing was a nullity.

In the case sub judice publication of the stigmatizing charges was in progress concurrently with petitioner's termination, as apparently, minutes of the meeting were being taken for the public record.[1] There were no exigent circumstances compelling termination prior to a hearing, as the alleged "misappropriation" had ceased two months prior to the termination, the county's chief witness testified at the hearing that petitioner was an efficient and able employee, and petitioner's personality had been tolerated by other county officers and employees for a period of nine years.

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1. The suggestion of the court of appeals that the publication of the commissioners' meeting was "legally sanctioned" by Georgia statutory law, in accordance with a ruling of the district court, is incorrect. The applicable Georgia statutory provisions, which exclude personnel action from publication requirements and from the open-meetings law, are included in the Appendix at pages A-42 through A-43.

THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT REQUIRING A HEARING AT A MEANINGFUL TIME AND IN A MEANINGFUL MANNER BEFORE A FAIR TRIBUNAL.

The district court wrote in its order: "[P]laintiff complains that the hearing was inadequate because the personal animosity of the two defendant Commissioners prevented them from disavowing the charges....But this ignores the "name-clearing" purpose of the hearing. If plaintiff's contention was correct, the hearing afforded her the opportunity to expose such animosity. Due process requires no more." Thus, the district court held that due process in the protection of a liberty interest in this context permits a hearing before a biased, even inimical, tribunal. In its opinion of September 18, 1984, the court of appeals wrote: "[W]e agree with the

district court that the nature of the hearing resolves this question."

To the contrary, the Supreme Court has written, with regard to protected interests, in Boddie v. Connecticut, 401 U.S. 371, 378-379 (1970), as follows:

> What the Constitution does require is "an opportunity...granted at a meaningful time and in a meaningful manner...for [a] hearing appropriate to the nature of the case....[Emphasis added.]

The Supreme Court has also written, in Withrow v. Larkin, 421 U.S. 35, 46-47 (1975):

> [A] fair tribunal is a basic requirement of due process....[A] biased decisionmaker [is] constitutionally unacceptable....

Our constitution simply does not condone proceedings typical of the Court of Star Chamber. The manner of a "name-clearing" hearing cannot possibly be meaningful if the judges conducting the hearing are not sufficiently impartial to disavow the stigmatizing charges if ap-

propriate, but are prepared only to affirm their own prior actions. Petitioner respectfully contends that the holding of the court of appeals, which does not require a repudiation of charges fairly shown to be false, would make a "name-clearing" hearing a futile and empty gesture for a fired public employee and would permit public officials to repeat and aggravate the original deprivation of liberty by sham hearing without constitutional hindrance.

THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT PERMITTING A DAMAGES REMEDY FOR VIOLATONS OF PROTECTED RIGHTS.

The holding of the court of appeals that petitioner was not entitled to a damages remedy was predicated on its holdings that a pre-termination hearing was not required and that the post-termination hearing was not constitutionally

inadequate. The latter holding gave no consideration to petitioner's claim that the post-termination hearing was a sham, as in Simineo v. School Dist. No. 16, 594 F.2d 1353, 1356-1357 (10th Cir. 1979), or that it might have been ineffectual to erase the stigma created by the false charges, as recognized in Rodriguez de Quinonez v. Perez, 596 F.2d 486, supra at 491. If a pre-termination hearing was required under the circumstances or if the post-termination hearing was constitutionally inadequate or ineffectual to erase the stigma, a damages remedy was clearly available under the holdings of the Supreme Court in Carey v. Piphus, 435 U.S. 247 (1978), and Owen v. City of Independence, 445 U.S. 622, supra. As the Court wrote in Owen at page 651:

> How "uniquely amiss" it would be if the government itself - "the social organ to which all in our society look for the promotion of liberty, justice, fair and equal treatment, and the set-

> ting of worthy norms and goals for social conduct" - were permitted to disavow liability for the injury it has begotten....

CONCLUSION

The Supreme Court held in Codd v. Velger, 429 U.S. 624, 627, supra: "[T]he remedy mandated by the Due Process Clause of the Fourteenth Amendment is 'an opportunity to refute the [stigmatizing] charge.'" That language does not mean literally that a pre-termination hearing is never required, as it has been interpreted in the eleventh circuit and in the fifth circuit, nor does it mean that a hearing before an inimical tribunal comports with due process because it affords "the opportunity to expose such animosity."

The courts have been diligent to protect a public employee's property interest in his employment, even where non-stigmatizing reasons prompt termination.

In such a case, the employee has little to lose other than his present employment. In contrast, the courts have found it conceptually much more difficult to protect the liberty interest of a public employee facing termination on stigmatizing charges. In the latter case, the employee suffers not only the loss of his job, but also the loss of good name, of solace of friends, of a sense of place in the community, and of future employment opportunities - a loss far more devastating than the loss of a simple property interest. Like petitioner, untold numbers of other subordinate public employees across this land find themselves in that same humiliating position every year.

Media vigilance toward happenings in government today is such that in most cases when a public employee is terminated on stigmatizing grounds publication can be prevented only by active conceal-

ment on the part of the officials involved in the termination. A liberty interest is therefore implicated and threatened at the point when termination on those grounds is first considered.

To ensure the efficacy of the Due Process Clause and fairness to the threatened employee, the hearing required to protect liberty in this context should be a timely pre-termination hearing - subject to the balancing test - "to prevent a substantively unfair or mistaken deprivation" of that interest. To suggest that when a liberty interest, rather than a property interest, is implicated the hearing required by the very same Due Process Clause should have some other or lesser purpose, is paradoxical. To suggest that an inimical tribunal in a post-termination hearing is acceptable, is unthinkable.

The plight of petitioner and of other public employees similarly situated now and in years to come and the plain conflict of the decision of the court of appeals with decisions of the Supreme Court and of other federal courts of appeals combine to present questions of sufficient substance and importance to warrant review by the Supreme Court. Upon the foregoing, it is respectfully submitted that the petition for a writ of certiorari should be granted.

This the 15th day of January, 1985.

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Latrelle CAMPBELL,
Plaintiff-Appellant,

v.

PIERCE COUNTY, GEORGIA, By and Through the BOARD OF COMMISSIONERS OF PIERCE COUNTY, Troy Mattox, Foy Kimbrell, and Larry Thomas,
Defendants-Appellees.

No. 83-8731

United States Court of Appeals, Eleventh Circuit

Sept. 18, 1984

Former county employee brought civil rights action alleging deprivations of constitutional rights arising from termination of her employment. The United States District Court for the Southern District of Georgia, Anthony A. Alaimo, Chief Judge, granted county's motion for summary judgment, and employee appealed.

The Court of Appeals, Johnson, Circuit Judge, held that county, which afforded discharged at-will employee of board of commissioners a posttermination hearing before a tribunal composed of board members, afforded employee a constitutionally adequate opportunity to clear her name only 14 days after her dismissal.

Affirmed.

1. Constitutional Law

As an at-will employee, county employee possessed no property interest in her continued employment.

2. Civil Rights

While damage to reputation, standing alone, does not provide basis for an action under Section 1983, when such damage is sustained in connection with a termination of employment, it may give rise to a claim for deprivation of liber-

ty actionable under Section 1983. 42 U.S.C.A. § 1983.

3. Constitutional Law

County, which afforded discharged at-will employee of board of commissioners a posttermination hearing before a tribunal composed of board members, afforded employee a constitutionally adequate opportunity to clear her name only 14 days after her dismissal and therefore she was not entitled to damages under Section 1983. U.S.C.A. Const.Amend. 14; 42 U.S.C.A. § 1983.

Appeal from the United States District Court for the Southern District of Georgia.

Before KRAVITCH and JOHNSON, Circuit Judges, and ALLGOOD*, District Judge.

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*Honorable Clarence W. Allgood, U.S. District Judge for the Northern District of Alabama, sitting by designation.

JOHNSON, Circuit Judge:

This is an action brought under 28 U.S.C.A. § 1343(3) and 42 U.S.C.A. § 1983 for alleged deprivations of constitutional rights arising from termination of public employment. The former employee, Latrelle Campbell, appeals from an order of the United States District Court for the Southern District of Georgia granting the county's motion for summary judgment. Because there is no material issue of fact as to whether the appellant was given the constitutionally required opportunity to clear her name in connection with her termination, we affirm.

I. Factual Background

Appellant Campbell was employed as Assistant Clerk to the Board of Commissioners of Pierce County until January 5, 1982. On that date, a meeting of the Board of Commissioners voted to dismiss

her from employment. At the conclusion of the session, appellant received both oral and written notification of the decision and the reasons which led to it. The reasons cited were insubordination, disrespect and misappropriation of county funds. The personnel action taken against appellant Campbell and the reasons for her dismissal were reported in the minutes of the Commissioner's meeting and thus became available to the public. Subsequently, local newspapers and radio stations began a series of reports publicizing her termination and the charges of insubordination and mishandling of county funds.

On the 8th of January, appellant received correspondence from the appellees, reiterating the reasons for her dismissal and setting a date for the hearing that appellant had previously requested. On

January 21, 1982, a hearing was held at which the county presented witnesses who testified as to the circumstances which led to appellant's dismissal. Appellant was afforded the opportunity to cross-examine such witnesses and to present evidence on her behalf. After hearing all of the relevant testimony, the Board of Commissioners affirmed its previous decision.

On January 3, 1983, appellant filed her complaint under 42 U.S.C.A. § 1983, alleging that her termination and the subsequent news coverage of the reasons for it had damaged her reputation and impaired her ability to secure future employment. She claimed that this damage, which allegedly deprived her of liberty without due process, was not cured by the subsequent hearing, which she claimed was inadequate and constitutionally

infirm. She sought relief, in the form of damages, from the county. On September 30, 1983, the district court granted the county's motion for summary judgment, holding that the January 21, 1982, hearing provided appellant with the "fair opportunity to clear her name" which was constitutionally required in cases involving reputational or liberty interests. From this order Campbell appeals.

Appellant claims that the district court erred in holding as a matter of law that she was not entitled to a pre-termination hearing, that the post-termination hearing provided was not constitutionally inadequate, and that she was not entitled to a damages remedy. In evaluating appellant's claims, we will consider first the nature of the deprivation alleged, and the appellant's contentions concerning the adequacy of the process provided.

II. Nature of the Deprivation

[1,2] One issue with respect to which the parties agree in this case is the nature of the deprivation claimed. Appellant admits that, as an at-will employee, she possessed no property interest in her continued employment with Pierce County. The harm suffered by the appellant was damage to reputation caused by the adverse publicity arising from the legally-sanctioned publication of the Commissioner's meeting at which she was dismissed. While damage to reputation, standing alone, does not provide the basis for an action under Section 1983, Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976), when such damage is sustained in connection with a termination of employment, as occurred in the instant case, it may give rise to a claim for deprivation of liberty actionable under

Section 1983. Codd v. Velger, 429 U.S. 624, 97 S.Ct. 882, 51 L.Ed.2d 92 (1977); Paul v. Davis, supra; Roth v. Board of Regents, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); In Re Selcraig, 705 F.2d 789 (5th Cir.1983); White v. Thomas, 660 F.2d 680 (5th Cir. 1981).

Yet while appellant concedes that she possesses only a liberty interest in connection with her termination, she demands a type of process which is virtually indistinguishable from that afforded claimants with a property interest in their employment. The district court held, and we agree, that these two types of interests require distinct procedural responses.

Where a property interest is at stake, courts have usually held that a pre-deprivation hearing may be required.[1] Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893,

47 L.Ed.2d 18 (1976); Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972); Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); Glenn v. Newman, 614 F.2d 467 (5th Cir.1980). The purpose of such a hearing is to prevent a substantively unfair or mistaken deprivation of the claimant's interest. Carey v. Piphus, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978); Fuentes v. Shevin, supra.

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1. Not all of the courts which have adopted this position have actually ordered the pre-deprivation hearings sought in the cases before them. Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), which articulated the balancing test relied on by appellant, held that a pre-deprivation hearing was not required before an individual could be deprived of social security disability payments. Moreover, even in cases where courts have held that a pre-deprivation hearing was constitutionally required, they have sometimes held a post-deprivation hearing sufficient to cure the violation. Glenn v. Newman, 614 F.2d 467 (5th Cir.1980).

In cases where a liberty interest arising from reputational damage is implicated, the courts have followed a different procedural course. The hearings granted in such cases serve not to avert the unjustified denial of a specific benefit, but to allow the aggrieved party to "clear his name." Codd v. Velger, 429 U.S. 624, 627, 97 S.Ct. 882, 884, 51 L.Ed.2d 92 (1977). The procedural requisites of this type of hearing are also different. Because it is provided simply to cleanse the reputation of the claimant, the hearing need not take place prior to his termination or to the publication of related information adverse to his interests. The Fifth Circuit stressed this point in In Re Selcraig, a case involving a liberty interest similar to that at stake in this case:

> The hearing...is not a prerequisite to publication [of adverse material] and the state is not obliged to tender one. The state need only make known to the stigmatized employee that he may have an opportunity to clear his name upon request. It need not initiate the hearing process of its own accord.

705 F.2d 789, 796 (5th Cir.1983). See also Rodriquez de Quinonez v. Perez, 596 F.2d 486 (1st Cir.1979) (pre-termination hearing not required but post-termination hearing necessary in case involving liberty interest); White v. Thomas, supra, (post-termination hearing proper remedy for employee deprived of liberty interest during termination). While the features of such a hearing itself have been prescribed with substantial flexibility, courts have required that the claimant have notice of the charges which have been raised against him, and an opportunity to refute, by cross-examination or independent evidence, the allegations which gave rise to the reputational

injury. White v. Thomas, supra; Endicott v. Huddleston, 644 F.2d 1208 (7th Cir. 1980).

III. Adequacy of the Process Provided

[3] Against the backdrop of this precedent, it is clear that the district court was wholly justified in finding that Pierce County had afforded appellant Campbell the process necessary to redress any injury to her liberty interest.

A. Timing of the Hearing

The identification of appellant's claim as the deprivation of a liberty interest is dispositive of appellant's contention that she was entitled to a pre-termination hearing. The only process required in this case is the kind of "name-clearing" hearing described in Codd v. Velger and In Re Selcraig, supra; and such a hearing is not required to be held

prior to termination.[2] Indeed, as the court in Selcraig observed, the factual predicate for a claim of reputational damage is the publication of adverse material which, in this case, did not occur until after appellant's termination. In Re Selcraig, 705 F.2d 789, 797 (5th Cir.1983).

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2. Nothing in appellant's argument or sources establishes the contrary. The majority of the cases she cites--in particular Mathews v. Eldridge, supra, from which she derives the balancing test she claims is controlling--concern deprivations of a property, rather than a liberty, interest. Of the cases which implicate a liberty interest, one, Rodriguez de Quinonez v. Perez, supra, states unequivocally that only a post-termination hearing is required, and the other, which involved both liberty and property interests, draws less of a distinction between the two interests and instructs the parties that "the liberty interest could easily have been protected" in the pre-termination hearing required for the property interest. Vanelli v. Reynolds School Dist. No. 7, 667 F.2d 773, 778 (9th Cir.1982).

B. Procedural Features of the Hearing

In cases involving only liberty interests, the courts have required only that the claimant be accorded notice of the charges against him and an opportunity "to support his allegations by argument however brief, and, if need be, by proof, however informal." Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 16 n. 17, 98 S.Ct. 1554, 1564 n. 17, 56 L.Ed.2d 30 (1978); White v. Thomas, supra; Endicott v. Huddleston, supra. In light of such flexibility, the district court was correct to reject appellant's claim that the hearing provided by appellees was constitutionally inadequate. With respect to adequacy of notice, appellant had the full period between her termination and the January 21, 1982, hearing to familiarize herself with the charges that had been made against her; moreover, the

record of the hearing shows that she had, and availed herself of, opportunity to hear and cross-examine all adverse witnesses and to attempt to rebut their claims of insubordination and mishandling of funds. As to appellant's charge that the composition of the tribunal rendered impartiality impossible, we agree with the district court that the nature of the hearing resolves this question. Because the purpose of the hearing was not to re-evaluate appellant's termination but to allow her to clear her name, the fact that the tribunal was composed of members of the Board of Commissioners did not impair its ability to preside in an acceptably impartial manner.[3]

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3. Vanelli v. Reynolds School Dist. No. 7, supra, one of appellant's main authorities, goes even further on the question of impartiality. Citing decisions in a variety of contexts in which the prior participation of employers in termination decisions did not disqualify them from

C. Damages

In her claim for damages, appellant cites a number of cases in which courts have awarded damages in connection with the deprivation of a liberty interest. Yet these cases, in which the claimant was denied any procedural opportunity to clear his name, Owen v. City of Independence, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980); White v. Thomas, supra; Rodriguez de Quinonez v. Perez, supra, or in which a subtantial amount of time elapsed between the claimant's termination and the "name-clearing" hearing, Endicott v. Huddleston, supra (hearing not granted until almost three years after termination), are wholly distinguish-

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fn. 3. cont. participating in subsequent hearings, the court held that the participation of board members is "in practical effect no different from a judge or administrator rehearing his own decision after reversal and remand." 667 F.2d at 779 n. 10.

able from the instant case.[4] Because appellant was provided with a constitutionally adequate opportunity to clear her name only 14 days after her dismissal, she cannot prevail on her claim for damages under Section 1983.

AFFIRMED

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4. At least one court has expressed doubt as to whether the denial of due process in connection with a reputational injury could provide an independent basis for damages under Section 1983. Vanelli v. Reynolds School Dist. No. 7, 667 F.2d 773, 781 (9th Cir.1982) (doubting "there will be much difference" between the "intensity and degree of suffering when a procedural deprivation impairs both a liberty and propery interest as when it impairs only a property interest"). This reservation is in accord with the holding in Carey v. Piphus, supra, that damages arising from mental and emotional distress cannot be assumed but must be documented by proof.

Filed
September 30, 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

LATRELLE CAMPBELL, CIVIL ACTION
Plaintiff

v. No. 583-001

PIERCE COUNTY, GEORGIA (By and Through the Board of Commissioners of Pierce County), **TROY MATTOX, FOY KIMBRELL and LARRY THOMAS,**
Defendants

ORDER

This action is brought under 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983 by a former Pierce County employee seeking to redress alleged deprivations of constitutional rights arising out of her termination from County employment. Presently pending before the Court is defendants' motion for summary judgment.

FACTS

The plaintiff, Latrelle Campbell, was employed as Assistant Clerk to the Board of Commissioners of Pierce County until her dismissal on January 5, 1982. Defendant Larry Thomas was then serving as the County Clerk to the Board of Commissioners, a position of authority over the Assistant Clerk. At the January 5, 1982, meeting of the Board of Commissioners, Thomas requested that the Commissioners dismiss the plaintiff from her employment. The request was taken up by two of the three Commissioners at an Executive Session following the regular meeting. There, the two defendants, Commissioners Mattox and Troy, approved the firing of plaintiff.

At the conclusion of the Executive Session, plaintiff was brought into the Commissioners' office and informed of the decision and the reasons which led to it.

The reasons, as discussed at the Executive Session, were insubordination, disrespect and mishandling of county funds. The personnel action taken against plaintiff, along with the above reasons, were reported in the minutes of the Commissioners' meeting, thus becoming available to the public. Subsequently, the local newspapers and radio stations began a series of news reports which publicized plaintiff's termination and the charges of insubordination and mishandling of county funds.

Between the 7th and 10th of January, plaintiff or her attorney received correspondence from the defendants reiterating the reasons for her dismissal and setting a date for the hearing that had been previously requested by plaintiff. On January 21, 1982, a hearing was held at which the County presented witnesses who testified as to the circumstances which

led to plaintiff's dismissal. Plaintiff was afforded the opportunity to cross-examine such witnesses and to present evidence on her own behalf.

DISCUSSION

In her complaint, as further outlined in her contentions recited in a pretrial order, plaintiff contends that her termination constituted an unconstitutional infringement of her liberty, in violation of the Fourteenth Amendment's Due Process Clause, because the resulting stigma to her reputation has foreclosed future employment opportunities and caused her emotional distress. Plaintiff is not claiming any property interest deprivation because her position with the County was terminable at will.

The law is now settled as to the existence of a protected liberty interest which is implicated when an employee is

discharged in a manner that creates a defamatory impression about him and thereby impairs his future ability to secure gainful employment. Paul v. Davis, 424 U.S. 693 (1976); Board of Regents v. Roth, 408 U.S. 564 (1972). Where this liberty interest is implicated, the employee has a due process right to a hearing at which he is afforded the "opportunity to clear his name." Board of Regents v. Roth, supra. For purposes of ascertaining if a name-clearing hearing is required, there "must be some factual dispute between an employer and a discharged employee which has some significant bearing on the employee's reputation." Codd v. Velger, 429 U.S. 624, 627 (1977).

In the instant case, there is no dispute as to the fact that plaintiff's liberty interest was affected by the media publicity following her dismissal

from the defendants' employ. Further, plaintiff has steadfastly denied all charges of insubordination and mishandling of county funds. Nevertheless, defendants move for summary judgment based on the argument that plaintiff, having been afforded the opportunity to clear her name at the January 21 hearing, was not denied her procedural due process rights and, thus, no constitutional violation occurred.

At the outset of its inquiry into the proper procedure mandated by the Due Process Clause, the Court notes that the federal cause of action involved here is for the "breach of the duty that the Fourteenth Amendment imposes on states and their officials not to deprive a person of liberty without due process of law." Cox v. Northern Virginia Transp. Commission, 551 F.2d 555, 558 (4th Cir. 1976).

The federal tort, therefore, is not the defamation. Paul v. Davis, supra.

When a court is presented with a liberty interest claim under § 1983, the primary inquiry is whether plaintiff was afforded an opportunity to refute the stigmatizing charges. This procedural opportunity requires that the employee be given a list of the reasons for his discharge and a hearing where he may respond to the impugning charges which led to his dismissal. Board of Regents v. Roth, supra at 573; Endicott v. Huddleston, 644 F.2d 1208, 1216 (7th Cir. 1980). Upon finding that no opportunity to refute the charges was ever given, it becomes the duty of the district court to order a delayed Roth hearing. White v. Thomas, 660 F.2d 680 (5th Cir. 1981); Rodriguez de Quinonez v. Perez, 596 F.2d 486, 491 (1st Cir. 1979).

Although damages are clearly available under 42 U.S.C. § 1983, Carey v. Piphus, 435 U.S. 247 (1978), courts have indicated that money damages may be awarded to redress liberty interest deprivations in the emplyee-discharge setting only in rare instances. See, e.g., Wilson v. Taylor, 658 F.2d 1021, 1032-33 (5th Cir. 1981) (even though emotional distress caused by the denial of due process is compensable, money damages are unavailable if such injury was the result of plaintiff's justifiable discharge); Endicott v. Huddleston, supra (plaintiff could recover for injury occasioned by three-year passage of time between discharge and Roth hearing).

In response to defendants' motion for summary judgment, plaintiff argues that she was entitled to a pre-termination hearing to refute the charges made against her. For the reasons given below,

the Court finds that plaintiff was accorded a due process hearing with all necessary speed and, therefore, was not denied her due process right to an "opportunity to clear her name."

The premise behind the Supreme Court's decision to require a name-clearing hearing, at which stigmatizing charges can be refuted, is the existence of some defamatory charge. No liberty interest is implicated until such information becomes public. Upon publication of the charges, the opportunity to clear one's name becomes a constitutional right. Until the charges become publicly known, there are no smudges against the employee's name which call for refutation at a name-clearing hearing. This construction gives a meaning to the Supreme Court's carefully chosen wording of affording "an oportunity to clear one's name."

The purpose of such a post-termination hearing is not to allow the employee to argue for reinstatement. Here, plaintiff admits that she has no such property rights in her job. Thus, the purpose of the post-termination hearing is to provide plaintiff the opportunity to refute the charges that led to her dismissal. To require a pre-termination hearing, under these circumstances, would intolerably interfere with the functioning of local governments. A different rule would, in effect, give plaintiff a property interest in her job by preventing her discharge until good cause is shown.

This same rationale for holding that the right to refute defamatory charges does not arise until after the charges become publicly known was recently articulated by the Fifth Circuit when it stated:

> "[T]he remedy mandated by the Due Process Clause of the Fourteenth Amendment is 'an opportunity to refute the [stigmatizing] charge.'" Codd v. Velger, 429 U.S. 624, 627, 97 S.Ct. 624, 626-627, 51 L.Ed.2d 92, 95-96 (1977). If the charges were true, a hearing would not redress the stigmatization, for it would only demonstrate their verity. "No hearing would [in that case] afford a promise" of providing a person about whom derogatory information had been published with "an opportunity to clear his name." Codd v. Velger, 429 U.S. at 627, 97 S.Ct. at 884, 51 L.Ed.2d at 96. The hearing, then, is not a prerequisite to publication and the state is not obliged to tender one. The state need only make known to the stigmatized employee that he may have an opportunity to clear his name upon request. It need not initiate the hearing process of its own accord.

In Re Selcraig, 705 F.2d 789, 796 (5th Cir. 1983)(footnotes omitted). See also Cook v. Town of Davidson, 534 F.Supp. 808, 811 (W.D.N.C. 1982)(plaintiff not entitled to a pre-termination hearing).

In addition to the Court's interpretation as to when a name-clearing hearing must be afforded,[1] the fact that no intentional press releases were issued by

the County is also dispositive on the issue of when a hearing on the charges must be afforded. In fact, the charges were made at a meeting, the minutes of which are required by law to be made available for public inspection. See O.C.G.A. § 50-18-50, et seq. (1982).

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1. Plaintiff cites two cases that are arguably contrary to the Court's conclusion. See Vanelli v. Reynolds School District No. 7, 667 F.2d 773 (9th Cir. 1982), and Rodriguez de Quinonez v. Perez, 596 F.2d 486 (1st Cir. 1979). Both of these courts indicated that the three-factor balancing test of Mathews v. Eldridge, 424 U.S. 319 (1976), must be applied to determine if a pre-termination hearing is constitutionally required. This Court believes that the logic of the Fifth circuit, as outlined in the text, is correct. To the extent that the above-cited cases are inconsistent, the Court disagrees with their holdings. Moreover, the Ninth Circuit case involved a protected property interest and, therefore, a pre-termination hearing was already constitutionally required. Similarly, in the First Circuit case, the Government issued a defamatory press release without a sufficient basis to determine the accuracy of charges of dishonesty. The Court notes that neither of these factors is present in the instant case.

Moreover, upon the occurrence of the ensuing publicity given to the minutes as they related to plaintiff's discharge, a name-clearing hearing was held. The date of the hearing was set within a few days of plaintiff's dismissal. Under these circumstances, the Court concludes that plaintiff was not denied any procedural due process right because of the failure of the defendants to hold a pre-termination name-clearing hearing.

As if anticipating that the Court would accept defendants' contention with respect to the timing of the name-clearing hearing, plaintiff further argues that the January 21 hearing was constitutionally deficient. In this regard, plaintiff contends that (1) the notice of reasons for her discharge were insufficient; (2) no witness list or summary of their expected testimony was furnished to plaintiff prior to the hearing; and (3)

the tribunal that conducted the hearing was prejudiced against her.

As stated previously, the purpose of the notice and hearing in this setting is "to provide the person the opportunity to clear [her] name." Board of Regents v. Roth, supra at 573. While the Constitution requires that there be some form of hearing, the formality and procedural requirements for that hearing are not fixed. Id. at 570-571. In essence, a "due process hearing demands that the person have the right to support his allegations by argument, and if necessary, by proof however informal." Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 15 (1978). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976).

With respect to plaintiff's contentions as to the adequacy of the hearing, defendants have submitted to the Court the detailed record of the January 21 hearing. The voluminous record reveals that, in essence, a mini-trial was conducted as to the correctness of the charges forming the basis for the dismissal -- insubordination and the mishandling of county funds. All witnesses were sequestered and the proceeding was governed by established rules of evidence. Further, all witnesses presented by the County to substantiate the grounds for dismissal were tendered to plaintiff's counsel for cross-examination. Finally, all persons with knowledge of the charges were present and examined during the course of the hearing. Given the extent of plaintiff's cross-examination of witnesses and her own personal knowledge of what the charges against her

were, it cannot be said that the hearing was deficient because plaintiff was not given a detailed statement of the charges.

Similarly, plaintiff's contention that she was neither provided with the names of the County's witnesses nor the substance of their testimony is without merit. All of the witnesses were either present Commissioners or persons who had served as Clerks to the Commissioners while plaintiff was employed. As such, they could reasonably have been expected to testify at the hearing. See Glenn v. Newman, 614 F.2d 467, 473 (5th Cir. 1980).

Plaintiff's final contention with respect to the adequacy of the hearing is directed at the partiality of the Commissioners. More specifically, plaintiff complains that the hearing was inadequate because the personal animosity of the two

defendant Commissioners prevented them from disavowing the charges of insubordination and the mishandling of county funds. But this ignores the "name-clearing" purpose of the hearing. If plaintiff's contention was correct, the hearing afforded her the opportunity to expose such animosity. Due process requires no more. Besides, the evidence adduced at the hearing disclosed a rational basis, devoid of animosity, for the termination by the Commission's majority.

In sum, the Court discerns no issue of fact as to whether the plaintiff was offered a fair opportunity to clear her name.

In concluding that plaintiff is not entitled to a trial for damages flowing from any loss of reputation and impairment of employment oportunities, the Court notes that plaintiff is not left without a remedy. The plaintiff is free

to recover damages in a state law action for defamation.

Based on the foregoing analysis, the defendants' motion for summary judgment is hereby GRANTED. The Clerk is directed to enter an appropriate judgment dismissing the action.

SO ORDERED, this 30th day of September, 1983.

s/Anthony A. Alaimo
CHIEF JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 83-8731

D.C. Docket No. CV-583-0001

LATRELLE CAMPBELL,
Plaintiff-Appellant,

versus

PIERCE COUNTY, GEORGIA, by and through the Board of Commissioners of Pierce County, TROY MATTOX, FOY KIMBRELL and LARRY THOMAS,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Georgia

---

Before KRAVITCH and JOHNSON, Circuit Judges, and ALLGOOD*, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern

District of Georgia, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

---

*Honorable Clarence W. Allgood, U.S. District Judge for the Northern District of Alabama, sitting by designation.

Entered: September 18, 1984
For the Court: Spencer D. Mercer, Clerk

By: s/Miguel J. Cortez, Jr.
Deputy Clerk

ISSUED AS MANDATE: NOV 01, 1984

Filed
October 24, 1984

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 83-8731

LATRELLE CAMPBELL,

Plaintiff-Appellant

versus

PIERCE COUNTY, GEORGIA, by and through the Board of Commissioners of Pierce County, TROY MATTOX, FOY KIMBRELL and LARRY THOMAS,

Defendants-Appellees

Appeal from the United States District Court for the Southern District of Georgia

---

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion September 18, 1984

11 Cir., 1984, _____F.2d____).

(October 24, 1984)

Before KRAVITCH and JOHNSON, Circuit Judges, and ALLGOOD*, District Judge.

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*Honorable Clarence W. Allgood, U.S. District Judge for the Northern District of Alabama, sitting by designation.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

s/Frank M. Johnson, Jr.
United States Circuit Judge

GEORGIA STATUTORY PROVISIONS

Official Code of Georgia Annotated § 50-14-1 provides in pertinent part:

> (a) As used in this chapter, "agency" means any state department, agency, board, bureau, commission, or political subdivision; the governing authority or any department, agency, board, bureau, commission, or political subdivision of any county, municipal corporation, board of education, or other political subdivision; and any state or local housing authority.
>
> (b) Any provision of this or any other law to the contrary notwithstanding, the term "records" or "public records" means those documents and writings which are prepared and kept as written memorials of a final action taken by any agency.
>
> (c) All meetings of any agency at which official actions are to be taken are declared to be public meetings and shall be open to the public at all times. No resolution, rule, regulation, or formal action shall be binding except as taken or made at such meetings....
>
> (d) Representatives of the news media at all times shall be afforded access to meetings declared open to the public pursuant to subsection (c) of this Code section. Visual, sound, and visual and sound recording during open meetings by representatives of

the news media shall be permitted at each public meeting.

(e) The minutes of a meeting of any agency shall be promptly recorded and such records shall be open to public inspection....

Official Code of Georgia Annotated § 50-14-3 provides in pertinent part:

It shall be unlawful for any person who is a member of any agency to conduct any meeting not held in accordance with this chapter.

Official Code of Georgia Annotated § 50-14-4 provides in pertinent part:

This chapter shall not apply to the following...

(6) Meetings when:

(A) Any agency or other unit is discussing the appointment, employment, disciplinary action, or dismissal of a public officer or employee; or

(B) Any agency or other unit is hearing complaints or charges brought against a public officer or employee unless he requests a public meeting.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this day, prior to filing, served three copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit upon each of the persons indicated below, said persons being counsel of record for all respondents, by depositing the same in the United States mail, first-class postage prepaid, addressed to the following:

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This the 15th day of January, 1985.

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Office - Supreme Court, U.S.
FILED
FEB 7 1985
ALEXANDER L. STEVAS,
CLERK

CASE NO. 84-1161

In The Supreme Court Of The United States

OCTOBER TERM, 1984

LATRELLE CAMPBELL,

PETITIONER

v.

PIERCE COUNTY, GEORGIA, ET AL,

RESPONDENTS

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

LATRELLE CAMPBELL,

PETITIONER

v.

PIERCE COUNTY, GEORGIA, ET AL,

RESPONDENTS

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

TO: THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Respondents, Pierce County, Georgia, et al, assert that Petitioner's application for a writ of certiorari should be denied as there are no special and/or important reasons as enumerated

in Rule 17 of the Rules of the Supreme Court of the United States for such to be granted.

OPINIONS BELOW

The Petitioner has provided copies of the opinions below in an appendix to her brief. See A-2 through A-19 for the opinion of the United States Court of Appeals for the Eleventh Circuit published at 741 F.2d 1342 (11th Cir. 1984) and A-20 through A-37 for the unpublished opinion of the United States District Court for the Southern District of Georgia.

JURISDICTION

The judgment of the Court of Appeals was entered on September 18, 1984. Petitioner's motion for rehearing was denied by the Court of Appeals on October 24, 1984. While the petition

for a writ of certiorari is timely, Respondents strongly urge this Court in its sound judicial discretion to deny a review of the opinion of the United States Court of Appeals for the Eleventh Circuit on a writ of certiorari insomuch as that ruling fails to qualify under the considerations governing review on certiorari enumerated in Rule 17 of the Rules of the Supreme Court of the United States.

QUESTION PRESENTED

Whether the Eleventh Circuit Court of Appeals in affirming the District Court's ruling as a matter of law that Petitioner's liberty interest claim, Petitioner having conceded that she has no property interest in her continued employment, entitles her solely to an adequate due process hearing in order to

"clear her name", ruled in conflict with any standing United States Supreme Court decisions or Federal Court of Appeals rulings so as to warrant a grant of certiorari by the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

STATEMENT OF THE CASE

Petitioner filed her complaint under 42 U.S.C. §1983 and the Fifth and Fourteenth Amendments to the United States Constitution alleging that due to the actions of Respondents she had been deprived of liberty and property without due process of law, defamed and otherwise damaged. Respondents answered

denying these allegations. In her portion of the Pre-trial Order Petitioner withdrew her claim for violation of property interests. Respondents then filed a Motion For Summary Judgment attaching copies of the letters of notice and the transcript of the name-clearing hearing provided Petitioner. The Motion was granted and Respondents dismissed by order and judgment of the District Court on September 30, 1983. Petitioner appealed to the United States Court of Appeals for the Eleventh Circuit which on September 18, 1984, affirmed the District Court's judgment and denied the Petition for Rehearing on October 24, 1984.

On January 5, 1982, Mrs. Campbell was dismissed from employment by Respondent, Pierce County. Petitioner was

provided both oral and written notification of her dismissal on that date. A second letter enumerating the reasons for her discharge was also dated on January 5, 1982. The letter stated that Mrs. Campbell was being dismissed for:

"1. Insubordination to Clerk and County Commissioners.

2. Disrespect to Clerk and County Commissioners.

3. Misappropriation of County Funds - insurance premium payments.

4. Implementing policies that do not conform to good business practices.

5. Complaints from several persons dealing with the County Commissioners' office."

On January 8, 1982, Mrs. Campbell was notified that a formal hearing, as requested by her counsel, would be provided on January 21, 1982. On January 21, 1982, Petitioner received a

formal hearing which afforded her all of her due process rights. She had been provided with adequate notice of the hearing and the reasons for her dismissal. She was provided an opportunity to be represented by counsel, and an opportunity to present and cross-examine the witnesses. Mrs. Campbell did, in fact, obtain an attorney the very day she was discharged and was represented from that day on and at said hearing by her attorney who did present and cross-examine witnesses on her behalf. At said hearing, Petitioner was given the opportunity to hear all of the reasons for her discharge substantiated and the opportunity to fully clear her name. After hearing the testimony of all the witnesses, the Board of Commissioners affirmed its previous decision

to dismiss Mrs. Campbell. If any of Petitioner's "liberty" interests had been previously violated, such violations were cured by this hearing. Further, Petitioner, in the pre-trial order, conceded her total lack of a property interest in her employment by withdrawing such claim and further stated that she made no pendant state tort claims.

SUMMARY OF ARGUMENT

Petitioner having received both oral and written notification of her dismissal and a letter dated the day of her discharge enumerating the reasons for her discharge as well as a name-clearing hearing provided on January 21, 1982, all due process requirements have been satisfied. Where only an individual's liberty interests

have been violated, such violations are cured by a proper due process hearing which permits an individual to clear her name, and this is the sole remedy available. Codd v. Velgar, 429 U.S. 624, 627, 97 S.Ct. 882, 883-4, 51 L.Ed.2d 92, 95-6 (1977). The decision by the Eleventh Circuit Court of Appeals that no damages are available to Petitioner for violation of her liberty interests since the process and the timing of the hearing provided Petitioner were adequate is clearly correct and consistent with all authoritative decisions by the Supreme Court and by other federal courts of appeals. Codd v. Velgar, supra; In re Selcraig, 705 F.2d 789, 796 (5th Cir. 1983); White v. Thomas, 660 F.2d 680, 685 (1981) cert. denied 455 U.S. 1027, 102 S.Ct. 1731;

Glenn v. Newman, 614 F.2d 467, 472 (5th Cir. 1980); Dennis v. S & S Consolidated Rural H.S. Dist., 577 F.2d 338, 344 (5th Cir. 1978).

ARGUMENT AND CITATION

OF AUTHORITY

The District Court and Court of Appeals for the Eleventh Circuit properly found under F.R.C.P. 56(b) that Respondents were entitled to summary judgment as a matter of law there being no genuine issue as to any material fact remaining after a review of the pleadings, depositions, answers to interrogatories, letters of notice provided plaintiff, and the transcript of the name-clearing hearing provided Petitioner.

In her portion of the pre-trial order entered by the District Court, in

her appeal to the Eleventh Circuit and in her petition for writ of certiorari to this Court, Petitioner has consistently defined her claim as one solely for monetary damages which she alleges are recoverable under 42 U.S.C. §1983 for a deprivation of her liberty interest and reputation without due process under the Fifth and Fourteenth Amendments to the United States Constitution when she was dismissed from employment by defendant, Pierce County. Petitioner was not defamed by Respondent, Larry Thomas', letter dated January 5, 1982, which enumerates the reasons for her discharge as this letter was a private communication and was not made public by Pierce County, or any other named Respondents. See Bishop v. Wood, 426

U.S. 341, 348, 96 S.Ct. 2074, 2979, 48 L.Ed.2d 684 (1976).

Yet, even assuming arguendo that Respondents did in some manner defame the Petitioner in conjunction with her dismissal, the federal tort is not the defamation but is the denial of a hearing at which the dismissed employee had an opportunity to refute the public charge. Paul v. Davis, 424 U.S. 693, 712, 96 S.Ct. 1155, 1165-6, 47 L.Ed.2d 405 (1976); Board of Regents v. Roth, 408 U.S. 564, 573, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

> "The truth or falsity of the City Manager's statement determine whether or not his decision to discharge petitioner was correct or prudent, but neither enhances nor diminishes petitioner's claim that his constitutionally protected liberty interest has been impaired."

Bishop v. Wood, 426 U.S. at 348, 96 S.Ct. at 1079-80.

I.

THE DECISION THAT THE PROCESS PROVIDED AND THE TIMING OF THE HEARING WERE ADEQUATE IS CLEARLY CORRECT AND THERE IS NO CONFLICT OF DECISION.

The decision by the Eleventh Circuit Court of Appeals limiting Petitioner's remedy to a name-clearing hearing is consistent with all authoritative decisions by the Supreme Court and by other Federal Courts of Appeals. On her appeal to the Eleventh Circuit and in her petition to this Court, Petitioner seems to attempt to stand on language she quotes from Wisconsin v. Constantineau, 400 U.S. 433, 437, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971), a case which involves a state statute pursuant

to which the Petitioner was stigmatized, his name being posted in retail liquor outlets as one to whom intoxicating beverages should not be sold, as establishing a right to be heard before a discharge. The language Petitioner relies on is quoted in Constantineau, from Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 817 (1950), a case involving a person's right to an opportunity to be heard before deportation from this country. Petitioner then attempts to bolster her position by citing Roth, supra. Yet Roth says nothing about a prior hearing stating that:

> "The purpose of such notice and hearing is to provide the person an opportunity to clear his name." Roth, supra at 573, n. 12.

Further, it has been observed that the more recent decisions by this Honorable Court entered in Paul v. Davis, supra, and Codd v. Velgar, supra:

> "[b]oth necessarily imply that the Fourteenth Amendment provides only procedural protection against injury inflicted by state officers to the interest state employees have in their reputation." In re Selcraig, 705 F.2d 789, 796 (5th Cir. 1983).

Selcraig involved a 1983 suit brought by a discharged school official who sought damages alleging the publicizing of false and stigmatizing charges and a failure to afford a name-clearing hearing. The Selcraig court held that:

> "'[T]he remedy mandated by the due process clause of the Fourteenth Amendment is 'an opportunity to refute the [stigmatizing] 'charge.' ' Codd v. Velgar, 429 U.S. 624, 627, 97 S.Ct. 882,

> 883-884, 51 L.Ed.2d 92, 95-96 (1977)." Id.; see Dennis v. S & S Consolidated Rural H.S. Dist., 577 F.2d 338, 344 (5th Cir. 1978).

This Court has recently denied certiorari in another Fifth Circuit case which has followed this same line of reasoning. In White v. Thomas, 660 F.2d 680 (5th Cir. 1981) cert. denied 455 U.S. 1027, 102 S.Ct. 1731, a case which presented questions similar to those at issue below, a deputy sheriff was fired when it was discovered that he lied in answering a direct question on his employment application regarding prior arrests. In White, plaintiff alleged that defendant sheriff had distributed a press release concerning his discharge and given an interview to journalists which created a false and defamatory impression. After determining that the

plaintiff lacked any property interest in continued employment, the court went on to remand the case to the District Court for further proceedings concerning a name-clearing hearing, but stated that it did not foreclose the possibility of a summary judgment.

In addition, the White court opined that:

> "If White would have been fired once the juvenile incident had been uncovered, absent the allegation that he lied in failing to disclose the incident on his employment application, then his dismissal may not be challenged even though he may have been deprived of a liberty interest without due process of law by the allegation that he lied. [Cites.]" Id. at 685. The Court further stated that:
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> "Although White is entitled to a hearing to attempt to clear his name

> of the charge that he lied on his employment application he is not entitled to any section 1983 relief because of deprivation of a liberty interest." Id. (Emphasis added).

Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), is cited by Petitioner with the contention that it establishes a balancing test which would preponderate in this case for a pretermination hearing. However, Eldridge involves the statutorily created property interest an individual has in the continued receipt of social security benefits and the court held even so that an evidentiary hearing was not required prior to termination of social security disability benefits.

Even since before its rulings in Selcraig and White and over the past nine years, the Fifth Circuit has

consistently and appropriately interpreted and applied the decisions of this Honorable Court to limit the remedy for violations of solely liberty interests to a "name-clearing hearing". In Glenn v. Newman, 614 F.2d 467, 472 (5th Cir. 1980), the Fifth Circuit reviewed the procedure it had outlined for compliance with due process requirements. The Glenn court held that although the pretermination procedures afforded plaintiff, a former city police officer, did not conform with its previously enumerated due process requirements, any error involved was cured in the subsequent public hearing. Id. citing Blair v. Robstown Independent School District, 556 F.2d 1331, 1334-5 (5th Cir. 1977); Thurston v. Dekle, 531 F.2d 1264, 1269 (5th Cir. 1976) vacated on other

grounds, 438 U.S. 901, 98 S.Ct. 3118, 57 L.Ed.2d 1144, on remand 578 F.2d 1167. A distinguishing feature in Glenn, however, is that there the plaintiff was found to possess a property interest in his continued employment and therefore received back pay for the time period between his discharge and the date of his post-termination hearing.

Petitioner cites Boddie v. Connecticut, 401 U.S. 371, 378-379, 91 S.Ct. 780, 28 L.Ed.2d 113 (1970), and Vanelli v. Reynolds School Dist. No. 7, 667 F.2d 773, 778, n. 8 (9th Cir. 1982), and Simineo v. School Dist. No. 16, 594 F.2d 1353 (10th Cir. 1979), cases which involved a property interest and those courts required a pretermination hearing for that reason. Petitioner also cites

Rodriguez de Quinonez v. Perez, 596 F.2d 486 (1st Cir. 1979), a first circuit case where the government issued a defamatory press release without a sufficient basis to determine the accuracy of the charges of dishonesty, a factor not involved in this case and found by the district court to be a distinguishing one.

Petitioner quotes certain language from Withro v. Larkin, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975), as authority for an impartial tribunal and yet that case involved the liberty and property rights of a licensed physician to continue to practice and the authority cited by the court following the quoted language relates to tribunals who have pecuniary interests in the outcome of their decision. The possibility that

there existed some partiality or personal animosity among those presiding over the hearing lacks significance in light of the purpose of the name-clearing hearing which is to allow plaintiff an opportunity to expose any animosity or partiality. See Roth, supra at 573, n. 12; Selcraig, supra at 796; Dennis, supra at 344. As noted by the district court due process requires no more. Additionally, the holding of the Court of Appeals, does not as Petitioner contends, fail to require that a tribunal repudiate charges fairly shown to be false. Finally, the hearing itself disclosed in the case sub judice that a rational basis existed for Petitioner's dismissal.

II.

THE DECISION THAT NO DAMAGES REMEDY IS AVAILABLE WHERE SOLELY LIBERTY INTERESTS HAVE BEEN VIOLATED IS CLEARLY CORRECT AND THERE IS NO CONFLICT OF DECISION.

Petitioner cites Carey v. Piphus, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978), in support of her position that damages are available where the sole violation has been of a liberty interest; yet, the authority this Court cites in its support seems to imply the existence of an underlying property interest:

> "...Even if they did not suffer any other actual injury the fact remains that they were deprived of their right to procedural due process. 'It is enought to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake, whatever the ultimate outcome of a

> hearing...[Cits.].' " Id. at 266.

In additional support of her assertion that a damages remedy is available where the plaintiff suffers only liberty interest violations, Petitioner quotes broad language from Owen v. City of Independence, Missouri, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980). The quoted language, however, was written in relation to the concept of extensive governmental immunity for all "good faith" constitutional violations and does not create a new damages remedy for constitutional violations where solely a liberty interest is involved. This Court's holding in Owen is more restricted than Petitioner suggests and seems simply to establish that damages are now recoverable from municipalities which were

formerly held to be protected under the doctrine of sovereign immunity.

This becomes more clearly evident as the subsequent proceedings in Owen are traced. On remand, the Eighth Circuit stated that it remanded the action to the district court "for further proceedings consistent with...the opinion of the Supreme Court... in parts II and III of our earlier opinion in Owen v. City of Independence, Missouri, 560 F.2d 925 (8th Cir. 1977). (Owen 1) Notwithstanding our comments in part IV of Owen 1, the district court remains free to fashion a remedy for Owen's constitutional deprivations and award appropriate relief." Owen v. City of Independence, Missouri, 623 F.2d 550, 551 (8th Cir. 1980). (Emphasis added).

In part II of its earlier opinion the 8th Circuit court quoted with approval Codd v. Velgar, supra:

> "...The remedy mandated by the due process clause of the Fourteenth Amendment is 'an opportunity to refute the charge'. 408 U.S. at 573, 92 S.Ct. at 2707. 'The purpose of such notice and hearing is to provide the person an opportunity to clear his name,' Id., n. 12." Owen v. City of Independence, Missouri, 560 F.2d 925, 935-6 (8th Cir. 1977).

There is no report of the final remedy provided by the district court, but we may only assume that such remedy was fashioned consistent with the above language as directed by the Eighth Circuit court on remand.

Hence, we see that Owen, although it shattered "good faith" sovereign immunity for local governments in

Section 1983 actions, did not create a new form of recovery for damages under Section 1983 for violations of an individual's liberty interest uncoupled with some other constitutional violation or claim.

CONCLUSION

For the reasons set forth above, Respondents respectfully urge this Court to deny the petition for a writ of certiorari.

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